



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON, D.C. 20370-5100

TRG

Docket No: 4086-00

19 October 2000

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]

Ref: (a) Title 10 U.S.C. 1552

Encl: (1) DD Form 149 w/attachments
(2) Case Summary
(3) Subject's naval record

1. Pursuant to the provisions of reference (a), Petitioner, an enlisted member of the United States Naval Reserve filed enclosure (1) with this Board requesting that his record be corrected to show that he transferred to the Retired Reserve under the provisions of the Reserve Transition Benefit (RTB) program.

2. The Board, consisting of Mr. Morgan, Mr. Whitener and Mr. Harrison, reviewed Petitioner's allegations of error and injustice on 11 October 2000 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. Enclosure (1) was filed in a timely manner.

c. Petitioner reenlisted in the Naval Reserve on 17 August 1997 for six years. At the end of his anniversary year on 20 August 1998 he was credited with 16 years, 11 months and 10 days of qualifying service for reserve retirement. In the next anniversary year Petitioner was credited with three months worth of drills and then transferred to a nonpay status. The date of transfer is unknown but three full months into his anniversary year would taken him through November 1998.

d. Petitioner states that in 1999 he applied for retirement under the provisions of the RTB but the command failed to submit

the retirement package in a timely manner. The record shows that on 4 April 2000, the Commander, Naval Reserve Force sent a letter to the commanding officer of the Reserve Center stating, in part, as follows:

... Reference (a) (Petitioner's retirement request) is disapproved. ... Reserve Transition Benefit application(s) must be submitted within 40 days of transfer to a nonpay status.

... If (Petitioner) believes he has suffered an injustice through the determination that he was not eligible for Reserve Transition Benefits, he may submit an application for correction of his naval record ...

CONCLUSION:

Upon review and consideration of all the evidence of record the Board concludes that Petitioner's request warrants favorable action. The Board notes that Petitioner met the requirements for early retirement under the RTB program, but his application was denied solely because he had not met the requirement that the application for retirement be submitted within 40 days of transfer to a nonpay status. The Board believes that his request for retirement would have been submitted earlier if he had been aware of the 40 day requirement or his command had realized the importance of submitting it in a timely manner. Therefore, the Board concludes that Petitioner's naval record should be corrected to show that he transferred to the Retired Reserve with eligibility for retired pay at age 60 under the provisions of the RTB program. Since he drilled in the first part of his anniversary year, the Board concludes that the transfer to the Retired Reserve should be effective on 1 January 1999.

The Board further concludes that this Report of Proceedings should be filed in Petitioner's naval record so that all future reviewers will understand his status in the Retired Reserve.

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that on 1 January 1999 he transferred to the Retired Reserve with eligibility for retired pay at age 60 under the provisions of the RTB program.

b. That this Report of Proceedings be filed in Petitioner's naval record.

4. It is certified that a quorum was present at the Board's


review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN
Recorder



ALAN E. GOLDSMITH
Acting Recorder

5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.



W. DEAN PFEIFFER
Executive Director